

**Rochester Manufacturing Co. and James Cecil
Local 614, International Brotherhood of Teamsters,
AFL-CIO and James Cecil.** Cases 7-CA-33302
and 7-CB-9219

March 12, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

On March 31, 1993, Administrative Law Judge Frank H. Itkin issued the attached decision. The General Counsel, the Respondents, and the Charging Party filed exceptions and supporting briefs, the Charging Party filed a reply brief to the Respondents' exceptions, and the Respondent Union filed a reply brief to the Charging Party's cross-exceptions.

On June 14, 1996, the National Labor Relations Board issued a Notice and Invitation to File Briefs. Assuming without deciding that the Respondent Union unlawfully failed to give employees required notices, the Board invited the parties "to submit their views as to the appropriate remedies, including possible reimbursement remedies, for employees who were not given the proper notice; their views as to the period for any such remedies should they be given; and how to determine the class of persons to whom they should be given." The General Counsel, the Respondent Union, and the Charging Party submitted supplemental briefs.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified and set forth in full below.²

I. UNFAIR LABOR PRACTICES

The judge found that the Respondents entered into and maintained a collective-bargaining agreement containing a facially unlawful union-security clause requiring unit employees to be "members in good standing" in the Union. Applying Board precedent that has issued since the judge's decision, we reject the judge's finding of a violation. However, we find that the Respondent Union violated the Act by failing to provide notice to Charging Party James Cecil and other unit employees of their rights under *NLRB v. General Motors*,

373 U.S. 734 (1963), and *Communications Workers v. Beck*, 487 U.S. 735 (1988). We find no merit in the parallel allegation against Respondent Rochester Manufacturing Co. (Rochester), but we do find that Respondent Rochester has violated the Act in a number of respects relating to its enforcement of union security.

A. Respondent Local 614

1. Legal principles

In *California Saw & Knife Works*, 320 NLRB 224 (1995), and *Paper Workers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), the Board resolved a wide range of issues under the Supreme Court's *Beck* decision. These issues include the extent to which unions which are parties to union-security clauses must apprise (1) nonmember bargaining unit employees of their *Beck* rights, and (2) all bargaining unit employees of their rights under *General Motors*, supra, to be or remain nonmembers of the union that represents their bargaining unit.

Regarding the *Beck* notice, *California Saw*, supra, held that a union violates its duty of fair representation when, in seeking to obligate employees to pay fees and dues under a union-security clause, it fails to notify bargaining unit employees who are not union members that they have the right to limit their payment of union-security dues and initiation fees to moneys spent on activities germane to their union's role as a 9(a) bargaining representative.

California Saw and *Weyerhaeuser* also addressed the separate issue of *General Motors* notice obligations: First, *California Saw* noted that the exercise of *Beck* rights is restricted to unit employees who are nonmembers, i.e., to those who have chosen not to become members of the union and whose obligations under the union-security clause are therefore limited to the "financial core" obligations of paying the union's initiation fees and dues. 320 NLRB 235 fn. 57. Second, *California Saw* observed that, without notice of *General Motors* rights, employees could be misled into believing that full union membership was required as a condition of employment. To dispel the fostering of this misconception, the Board stated that, in addition to informing nonmember bargaining unit employees that *Beck* rights accrue only to nonmembers, a union must also tell them of their *General Motors* rights to be and remain nonmembers. Id.

The Board further explained that these notice requirements furnish significant protection to the interests of individual employees covered by union-security clauses requiring "membership" in the union as to their *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective bargaining. The Board empha-

¹ The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

sized that, in satisfying *Beck* notice obligations, a union is afforded a wide range of reasonableness under the duty of fair representation.³ *California Saw*, supra, 320 NLRB at 233:

[W]e stress that the union meets [its notice] obligation as long as [the union] has taken reasonable steps to insure that all employees whom the union seeks to obligate to pay dues [under a union-security clause] are given notice of their [*Beck*] rights.

In the companion *Weyerhaeuser* decision, the Board extended these requirements and held that unions must provide *Beck* and *General Motors* notice to members as well as nonmembers. *Weyerhaeuser* concluded that "the rationale of *California Saw* for concomitant notice of *Beck* and *General Motors* rights applies with no less force to those who are still full union members and who did not receive those notices before they became members." Supra, 320 NLRB 349.

The "inextricable link" that *Weyerhaeuser* identified between *Beck* and *General Motors* rights was the legal predicate for the *General Motors* notice violation found in *Weyerhaeuser*. An employee necessarily must be informed of and exercise the *General Motors* right to be a nonmember before that employee can exercise *Beck* rights, for *Beck* rights apply only to nonmembers. *Weyerhaeuser* held that

[I]n order for all unit employees subject to a union-security provision to exercise their *Beck* rights meaningfully, the law requires that notice of those rights include notice that the only way in which they can do so is to exercise the right under *General Motors* to be nonmembers. [Id. at 350.]

By failing to provide notice of both sets of rights, the Board found that the Union had violated Section 8(b)(1)(A) of the Act.

2. The Rochester unit

By attacking the facial validity of "members-in-good-standing" language in the union-security clause, as executed and maintained by the Respondent Union, the complaint essentially alleges that the clause misleads employees into believing that full union membership is required. We reject this contention. In light of the Union's obligations to apprise employees of their rights to be nonmembers and to apprise nonmembers of their right to pay less than full dues and fees, there is no warrant for declaring the union-security clause unlawful on its face. The clause is clarified by the required notices. Indeed, in this case, the remedial order

will require the Union to give those notices.⁴ On the other hand, as discussed supra, the Respondent Union has failed to apprise employees of their *Beck* and *General Motors* rights.⁵ Consistently with *California Saw* and *Weyerhaeuser*, we find that failure to be unlawful.⁶

In addition, the Respondent Union violated Section 8(b)(1)(A) when it threatened Charging Party Cecil with reprisals because of his failure to become a full member despite Cecil's protestations that he had no obligation to do so, and when it later attempted to require him to pay full initiation fees and membership dues.⁷

B. Respondent Rochester

We have reversed the judge's finding that Respondent Rochester entered into and maintained a facially unlawful contractual union-security provision. The judge found merit in the further allegations that Respondent Rochester violated Section 8(a)(1), (2), and (3) of the Act by advising Cecil and other unit employees that checkoff authorization forms must be filled out and that dues payment and membership in the Union are required as conditions of continued employment. Finally, the judge found that Respondent Rochester violated Section 8(a)(1) by threatening Cecil with unspecified reprisals and termination because of his failure to join the Union, and by deducting union membership dues from his wages without authorization. As set forth below, we agree only with the judge's finding that Respondent Rochester violated the Act by conditioning employment on the execution of checkoff authorization forms and by deducting dues from Cecil's paycheck without his authorization.

⁴In light of our conclusion that the union-security clause is not unlawful on its face, we dismiss all 8(a) allegations that are based on Respondent Rochester's being a party to that clause. As the Respondent Union has taken no affirmative steps to cause, or attempt to cause, Respondent Rochester to discriminate against employees in this regard, we also dismiss the related 8(b)(2) allegation.

⁵Although the complaint allegation focuses on the clause, while the finding of a violation focuses on the absence of notice, we find that the two are substantially related, so as to permit the finding. In this regard, we note that both concern the Union's duty to apprise employees of their *Beck* and *General Motors* rights.

⁶In Member Higgins' view, a union is required to give *General Motors* and *Beck* notices not only at the time when union-security obligations attach (See *California Saw*, supra at 231 and fn. 41), but also each year thereafter, in circumstances where a union requires that *Beck* objections be renewed each year in order to remain valid. See *Group Health, Inc.*, 323 NLRB 251, 255 fn. 6 (1997).

⁷However, as described more fully in the judge's decision, Charging Party Cecil spoke in late February or early March 1992 with Union Steward John Ireland and on March 10 with Union Business Agent Cecil Powell about his intent not to join the Union or to authorize dues deductions. We cannot conclude from the record evidence that the Respondent Union's participation in any of these conversations constituted efforts by the Respondent Union to obligate Cecil to pay full membership dues and fees. We thus find that no violation of the Act occurred during these conversations.

³The same principle holds true with respect to employees' *General Motors* rights. See *Weyerhaeuser*, supra, 320 NLRB at 350.

On February 5, 1992, 4 days after the parties entered into a collective-bargaining agreement containing a union-security clause, Cecil received a dues-checkoff authorization card with his paycheck. A note was attached stating that the checkoff card "must" be filled out and returned to a union official or to management and that "[d]ues payment is required for your continued employment." On February 6, Cecil received a letter from Rochester Human Resources Manager Kris Williamson, that was addressed to him and 22 other unit employees, repeating the admonition that "membership in the [Union] . . . is a requirement for continued employment at Rochester Manufacturing Company" (emphasis in original). Thereafter, Respondent Rochester deducted union membership dues from Cecil's wages without his authorization.

An employer may not lead employees to believe that the dues-checkoff authorization method of fulfilling financial obligations to their union is compulsory. *Grason Electric Co.*, 296 NLRB 872, 883 (1989); and *Mode O'Day Co.*, 280 NLRB 253 (1986). By directing employees to sign checkoff forms authorizing deductions of dues for the Respondent Union under threatened loss of continued employment, Respondent Rochester has interfered with, restrained, and coerced employees in the exercise of protected rights, in violation of Section 8(a)(1). *Mode O'Day Co.*, supra, 280 NLRB at 255. By this action, Respondent Rochester has aided and assisted the Union in violation of Section 8(a)(2) (*Baggett Industrial Constructors*, 219 NLRB 171, 172 (1975)) and discriminated against these employees in violation of Section 8(a)(3) (*Scottex Corp.*, 200 NLRB 446, 453 (1972)).

However, Respondent Rochester did not violate the Act by telling Cecil and other employees that they had to be "members" of the Union, and that "membership" and payment of "dues" can be made a condition of employment. In this regard, we note that the statute uses the term "membership," and payment of dues can lawfully be made a condition of employment. Concededly, a union has a fair representation duty to tell employees that the "membership" requirement entails only the payment of dues, i.e., full membership cannot be required. However, employers have no duty of fair representation, and thus they are not under an affirmative obligation to spell out for employees the precise extent of the union-security obligation.⁸

We also adopt the judge's findings that Respondent Rochester has violated Section 8(a)(1) by deducting membership dues from Cecil's wages without his authorization. *General Instrument Corp.*, 262 NLRB

1178 (1982) enfd. mem. 742 F.2d 1438 (2d Cir. 1983).⁹

Finally, Respondent Rochester did not violate the Act by telling Cecil that the payment of dues was a condition of employment. Concededly, Respondent Rochester did not tell Cecil of his *Beck* right to pay less than full dues. However, as discussed above, employers have no such obligation.

II. AMENDED REMEDY

A. Scope of the Complaint

This case represents a combination of *California Saw*, supra, and *Weyerhaeuser*, supra, in the sense that the complaint covers both the allegation that the Respondent Union failed to give all employees *General Motors* notice (*Weyerhaeuser*) and the allegation that it failed to give *Beck* notice to nonmember employees (*California Saw*). As the complaint frames the notice issues, it alleges that the Respondent Union failed to give *Beck* notice to a specific class of employees—nonmembers. However, we have also found that no employee had ever been told the *General Motors* right to be a nonmember. To restrict the *Beck* remedy in this case to nonmembers would result in a situation where a segment of the bargaining unit—current members—would receive no notice of their *Beck* rights at the time that they learn, pursuant to our Order, of their right to become nonmembers. Therefore, to better effectuate the purposes and policies of the Act, we shall order the Respondent Union to extend the notice of *Beck* rights to all employees in the unit, including members of the Union.

B. Nunc Pro Tunc Reimbursement

In view of the extensive litigation of the issue of dues reimbursement in this case,¹⁰ and with the benefit of a recent supplemental briefing by the parties,¹¹ we

⁹ Regarding the latter violation, we note that after making an unauthorized deduction of union dues from Cecil's wages on February 27, 1992, Respondent Rochester's comptroller admitted its error in a March 4, 1992 letter and returned to Cecil the amount that had been withheld. The letter assured him that he would incur no further unauthorized dues deduction. This action, however, was inadequate for Respondent Rochester to purge itself of unlawful conduct. For such a disavowal to be effective under the Board's unfair labor practice repudiation standards of *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1978), it must occur in an atmosphere that is free from other violations of the Act. Thus, Respondent Rochester is not absolved of having violated the Act in the unauthorized deduction of Cecil's dues.

We further note that, at the time of the hearing, the Respondent Union had retained none of the moneys that it had exacted from Cecil. There is insufficient evidence, however, to establish that the Respondent Union waived Cecil's obligations under the union-security clause entirely. Cf. *Laborers Local 265 (Fred A. Nemann Co.)*, 322 NLRB 294 (1996).

¹⁰ Cf. *California Saw & Knife*, supra, 320 NLRB 224.

¹¹ The General Counsel's supplemental brief does not request a reimbursement remedy for the violations we have found. The Board

⁸ Of course, if the employer affirmatively gives employees an incorrect message under threatened loss of employment (e.g., payment of dues is insufficient; full membership is required) that would constitute a violation of the Act.

have decided to address the significant compliance issue of what make-whole relief is appropriate for violations based on a union's failure to give employees notice of their *General Motors* and *Beck* rights. In *Weyerhaeuser*, a *Beck* reduction of dues and fees with reimbursement was ordered for an individual charging party who had been denied these notices, but who, having become aware of his statutory rights independently of information from his union, invoked them by attempting unsuccessfully to resign. The instant case presents the issue which was not addressed in *California Saw* and *Weyerhaeuser*, i.e., what is the remedy when all unit employees are either uninformed or misinformed about their rights under *General Motors* or *Beck*?

We have found that the Respondent Union violated Section 8(b)(1)(A) by failing to notify all unit employees of their rights under *General Motors* to become or remain nonmembers of the Union. Thus, unit employees were kept ignorant of their rights to be nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities that are not germane to the Union's duties as collective-bargaining agent and to obtain a reduction in dues and fees for such activities.

It is the Board's practice to remedy violations of the Act by restoring, to the extent feasible, the status quo ante, reconstructing the circumstances that would have existed but for the unlawful conduct. As the Supreme Court has observed, "our task in applying Section 10(c) is to take measures designed to recreate the relationships that would have been made had there been no unfair labor practice." *Franks v. Bowman Transportation*, 424 U.S. 747, 769 (1975). In this case, it is not feasible to determine in hindsight whether individual employees, had they been fully informed of their rights under *General Motors* and *Beck*, would have chosen not to join or remain in the Union and then filed *Beck* objections as nonmembers. It is therefore impossible to establish the identity of employees who, having reflected on the relative advantages of union membership or nonmembership, would have chosen not to be union members and then requested and obtained a *Beck* reduction of dues and fees.

In order to restore the status quo ante, we shall order the Respondent Union to give all employees in the bargaining unit notice of their rights under *General Motors* and *Beck*. The *Beck* notice shall contain sufficient information, for each accounting period covered by the complaint, to enable those employees who were in the bargaining unit during those accounting periods, to decide intelligently whether to object. See, e.g.,

California Saw, supra, 320 NLRB at 253. With respect to those employees who, with reasonable promptness after receiving their notices, elect nonmember status and make *Beck* objections with respect to one or more of the accounting periods covered by the complaint, we shall order the Respondent Union, in the compliance stage of the proceeding, to process their objections, nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw & Knife*. The Respondent Union shall then be required to reimburse the objecting nonmember employees for the reduction in their dues and fees, if any, for non-representational activities that occurred during the accounting period or periods covered by the complaint in which the nonmember employee has objected.¹²

Concededly, it is not certain that employees who are or become nonmembers and make *Beck* objections pursuant to this remedy, would have chosen to object if they had been properly advised of their rights at the time the Union first sought to obligate them under the union-security clause. However, it is a familiar principle that the burden of resolving uncertainty must be borne by the wrongdoer.¹³ The Respondent Union will have the opportunity in compliance to cut off its liability by showing, with respect to any given employee, that subsequent to the events covered by the complaint, the employee was given the required notice of its *General Motors* and *Beck* rights and that the employee declined the opportunity to elect nonmember status and become an objector. However, absent such a showing, we believe that the remedy set forth above comports with remedial principles under the Act.¹⁴

With respect to Respondent Rochester's deduction of dues pursuant to coercively obtained checkoff authorizations, we do not order any additional reimbursement of moneys because the affected employees were subject to a lawful union-security clause obligating them to pay dues.¹⁵

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 3
 "3. Respondent Rochester, by advising its unit employees that union-checkoff authorization forms must be signed to retain employment, has interfered with, restrained, and coerced its employees in the exercise of Section 7 rights, and has discriminated in regard to the hire, or tenure, or terms and conditions of employment

¹²Charging Party Cecil had all dues he has tendered to the Union returned to him on March 4, 1992, see fn. 6, supra. Therefore, he is not entitled to any reimbursement for any moneys he tendered through the date of the hearing.

¹³*Intermountain Rural Electric Assn.*, 317 NLRB 588, 590-591 (1995), enfd. mem. 83 F.3d 432 (10th Cir. 1996); and *Hamilton Electronics Co.*, 203 NLRB 206 (1973).

¹⁴All reimbursement remedies are subject to the limitation of Sec. 10(b) of the Act.

¹⁵*IBEC Housing Corp.*, 245 NLRB 1282 (1979).

is not precluded, however, from ordering a remedy that was neither given by the judge nor requested by any of the parties. See *Fieldcrest Cannon, Inc.*, 318 NLRB 470 fn. 6 (1995), enfd. in pertinent part 97 F.3d 65 (4th Cir. 1996).

of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3)."

2. Substitute the following for Conclusions of Law 6 and 7.

"6. The Respondent Union, by failing to notify unit employees, when it first sought to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the right of nonmembers under *Communications Workers v. Beck*, supra, 487 U.S. 735, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities, has violated Section 8(b)(1)(A) of the Act.

"7. The Respondent Union, by threatening James Cecil with reprisals because of his failure to join the Union and to pay full initiation fees and membership dues, and by later attempting to have Cecil pay full initiation fees and dues without providing him with notice concerning his rights as a nonmember under *Communications Workers v. Beck*, supra, has violated Section 8(b)(1)(A) and (2) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that

A. Respondent Rochester Manufacturing Co., Rochester, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising employees that union-checkoff authorization forms must be signed to retain employment.

(b) Threatening to terminate employees because of their failure to become full members of the Respondent Union.

(c) Deducting union membership dues from employees' wages without the employees' written authorization for the deduction and remittance.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Rochester, Michigan facility copies of the attached notice marked "Appendix A."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Rochester's authorized representatives, shall be posted by

Respondent Rochester immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Rochester has gone out of business or closed the facility involved in these proceedings, Respondent Rochester shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Rochester at any time since May 20, 1992.

(b) Post at the same places and under the same conditions set forth in paragraph (a) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Union's notice marked as "Appendix B."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Rochester has taken to comply.

B. Respondent Local 614, International Brotherhood of Teamsters, AFL-CIO, Rochester, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify unit employees, when they first seek to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(b) Threatening employees with reprisals because of their failure to become full members of the Union, and attempting to have nonmember employees pay initiation fees and membership dues without providing them with notice of their rights as nonmembers under *Communications Workers v. Beck*, supra.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all unit employees in writing of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(b) Process the objections of nonmember bargaining unit employees in the manner prescribed in the remedy section of this decision.

¹⁶If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Reimburse, with interest, nonmember bargaining unit employees who file objections under *Communications Workers v. Beck*, supra, with the Union for any dues and fees exacted from them for nonrepresentational activities, in the manner prescribed in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount of reimbursement to be paid union nonmember bargaining unit employees who file objections under *Communications Workers v. Beck*, supra, with the Union.

(e) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked "Appendix B."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent Union's authorized representatives, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Furnish signed copies of the notice to the Regional Director for posting by Respondent Rochester at all places on its premises where notices to employees are customarily posted. Copies of that notice, to be furnished by the Regional Director, shall, after being signed by the Respondent Union's authorized representatives, shall be returned to the Regional Director for disposition by him.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

¹⁷ See fn. 16, supra.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT advise employees that union-checkoff authorization forms must be signed to retain employment.

WE WILL NOT threaten to terminate employees because of their failure to become full union members.

WE WILL NOT deduct union membership dues from employees' wages without the employees' written authorization for the deduction and remittance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ROCHESTER MANUFACTURING CO.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify unit member employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

WE WILL NOT threaten employees with reprisals because of their failure to become full members of the Union, or attempt to have nonmember employees pay initiation fees and membership dues without providing them with notice of their rights as nonmembers under *Communications Workers v. Beck*, supra.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all member unit employees in writing of their right to be or remain nonmembers; and of

the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

WE WILL process the objections of nonmember bargaining unit employees and reimburse, with interest, nonmember bargaining unit employees for any dues and fees exacted from them for nonrepresentational activities for each accounting period since February 1, 1992, for which they file an objection in exercise of their rights as nonmembers under *Communications Workers v. Beck*, supra.

LOCAL 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Jerome Schmidt, Esq., for the General Counsel.
Timothy K. Carroll, Esq., for Respondent Employer.
Wayne A. Rudell, Esq., for Respondent Union.
W. James Young, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges were filed in the above cases on May 20 and a consolidated complaint issued on August 7, 1992.¹ The General Counsel alleges in the complaint that about February 1 Respondent Employer and Respondent Union entered into and have since maintained a collective-bargaining agreement which provides:

Art. 1, Section 2, Recognition, Union Shop And Dues. The Employer agrees that as a condition of continued employment, all present and future employees covered by this agreement shall become and remain members in good standing in Local Union No. 614, affiliated with the International Brotherhood of Teamsters of North America, no later than the 31st day following the beginning of their employment.

The General Counsel alleges that, by requiring employees to be members in good standing in the Union, the Employer has unlawfully encouraged its employees to join, support, or assist the Union. Further, by thus requiring membership in good standing in the Union as a condition of employment, the Union has caused and is causing the Employer to discriminate against employees in violation of Section 8(a)(3) of the National Labor Relations Act.

The General Counsel next alleges that the Employer, in addition, has unlawfully encouraged its employees to join, support, or assist the Union by advising unit employees in a letter dated February 6 that checkoff authorization forms must be filled out and dues payment is required for continued employment, and by advising the Charging Party and other unit employees in a letter dated February 25 that membership in the Union is a requirement for continued employment.

The General Counsel next alleges that the Employer also threatened to terminate the Charging Party about February 26 because of his failure to be a member in good standing in the Union, and deducted membership dues from the Charging Party's wages about February 27 notwithstanding the absence of the Charging Party's authorization for the deduction and remittance of membership dues.

The General Counsel next alleges that since February 1 the Union has failed to advise the Charging Party and other nonmember unit employees concerning their rights in accordance with *Communications Workers v. Beck*, 487 U.S. 735 (1988). And, further, about March 10 the Union allegedly threatened the Charging Party with reprisals because of his failure to pay union initiation fees and membership dues, and by letters dated March 20 and April 21 sought to have the Charging Party pay union initiation fees and membership dues, without providing him with notice concerning his rights under the *Beck* decision.

In sum, The General Counsel alleges that Respondent Employer, by the foregoing conduct, has violated Section 8(a)(1), (2), and (3) of the Act, and Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

Respondent Employer in its answer denies violating the Act as alleged. Respondent Union in its answer also denies violating the Act as alleged.

A hearing was held on the issues raised in Detroit, Michigan on November 16 and 17. On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Respondent Employer is admittedly an employer engaged in commerce as alleged, and Respondent Union is admittedly a labor organization as alleged. About February 1 the Employer and the Union entered into and have since maintained a collective-bargaining agreement (G.C. Exh. 8) which provides:

Art. 1, Section 2, Recognition, Union Shop And Dues. The Employer agrees that as a condition of continued employment, all present and future employees covered by this agreement shall become and remain members in good standing in [the Union] no later than the 31st day following the beginning of their employment.

Charging Party James Cecil testified that he is employed by Respondent Employer as a "tool crib attendant," and that on February 6 he received with his paycheck the following document, dated February 5, from his Employer (G.C. Exh. 2):

To: All Bargaining Unit Employees

Attached is a Teamsters Union "Check-Off Authorization" form that must be filled out, which authorizes Rochester Manufacturing Company to withhold Union dues from your paycheck.

Dues payment is required for your continued employment.

Return both copies to John Ireland [the Union steward] or to me [Kris Williamson, the Employer's human resources manager].

Thanks for your cooperation

¹ All dates are in 1992 unless otherwise indicated.

Attached to the above document was a union-checkoff authorization and assignment form (G.C. Exh. 3).

Thereafter, on February 25, Company Human Resources Manager Williamson handed Cecil the following document which lists his name and the names of 22 other unit employees (G.C. Exh. 4), and states:

According to our records, you have not yet returned the Teamsters Union "Check-Off Authorization And Assignment" form that was enclosed in your paycheck a few weeks ago.

Let me remind you that membership in the [Union] (which includes the payment of monthly dues) is a *requirement* for continued employment at Rochester Manufacturing Company.

Please fill out the form and return it to Kris Williamson in Human Resources, or to John Ireland, Union steward, no later than your Thursday (February 27) shift. [Emphasis in text.]²

On the following day, February 26, as Cecil further testified, Cecil went to Williamson's office. Cecil, referring to General Counsel's Exhibit 4, asked Williamson, "Will the Company fire me" if Cecil did not sign the form. Williamson responded:

The Company would not fire me [Cecil] . . . the Union would direct the Company to terminate me . . . within 30 days . . . because I was not considered a member in good standing, because I had not signed the check-off and paid the dues.

Cecil, "within a week's period of time," made an "appointment" and spoke with Union Steward Ireland in the foreman's office at the plant. Cecil testified:

I went to Ireland to tell him and ask him if he wanted me to talk to the Union, or if he would direct to the Union, that I was not going to sign the check-off and join the Union. And that I would be suing the Union . . . if I was terminated for not signing and joining the Union.

Ireland responded that he "would tell" Union Business Agent Cecil Powell.

In the meantime, on February 27, the Employer had deducted \$16 in union dues from Cecil's paycheck. (See G.C. Exh. 6.) Thereafter, on March 4, the Employer's comptroller notified Cecil (G.C. Exh. 5):

Since we have yet to receive your signed authorization form in order to deduct [Union] dues from your paycheck, we are returning the dues that were deducted from your paycheck dated February 27. . . . The Accounting Department has been instructed not to deduct any Union dues from an employee that has not signed an authorization form.

Later, on March 10, Cecil, as he further testified, spoke with Union Business Agent Powell while he was "in the tool crib" at the plant. Plant Superintendent Hershel Norris was also present. Cecil recalled:

[Business agent Powell] made the statement . . . that he understood that I did not want to belong to the Union . . . [and] I said that's correct. . . . [Powell] asked me why I didn't want to join the Union and I told him . . . I didn't need anyone else to discuss any questions that I have with the Company . . . I can do that myself. . . . And then at that point he said well you think you're some kind of intellectual . . . do you think you're better than those other people that are working out there. And I said no, but I do know my rights and am prepared to defend them. . . . I said I'm not going to sign your check-off. I am not going to join the Union. And, further, I would sue him personally and the other Union officials if I were terminated from my job. . . . He said to me that I would soon find out that the full force of the Union, the UAW and the other Unions, would join with him to come down on me. . . . And I said I'm still not going to sign your check-off or join your Union. . . . I told him to do whatever it was he had to do. . . . Powell then said . . . that I would soon see what it was I had to do . . . that I would soon be hearing from him and I would know what it is, that he would direct me as to what I had to do.³

On March 19 Company Human Resources Manager Williamson gave Cecil a copy of the collective-bargaining agreement between the parties dated February 1 (G.C. Exh. 8), and a notice by the Employer's president (G.C. Exh. 7), stating:

**TO ALL UNION REPRESENTED EMPLOYEES OF
ROCHESTER MANUFACTURING COMPANY**

As you have probably noticed, there has been a notice posted for the past few days announcing that a meeting will be held at Local 614 offices this Saturday March 21 . . . at 11:00 a.m.

We encourage each and everyone of you to make every effort to attend that meeting as your votes for steward and committee persons have a significant effect upon you as well as Rochester Manufacturing Company.

Remember, a person that doesn't vote should have no complaint later.

Thereafter, on March 24, Cecil received the following letter from Union Business Agent Powell (G.C. Exh. 9):

As you know Local 614 is the certified bargaining representative for the employees at Rochester Manufacturing. I understand that you have refused to sign a check-off authorization which would allow monthly dues to be deducted directly from your paycheck. However, still as a condition of employment you must pay such monthly fees to the Union. The monthly fees for all bargaining unit employees including yourselves is \$16.00. Accordingly, please mail directly to Local 614 at the above address or deliver in person the sum of \$16.00 each month said dues are due and owing by the

³ Cecil later recalled that Powell, during the above confrontation, "asked me if I had ever heard of Taft-Hartley and . . . I would have to pay dues, and my answer to him was, no."

² G.C. Exh. 4 also recites: "cc: Payroll Union."

fifth of each month. To date the amount owed by you is \$32.00 for . . . February and March.

On April 24 Cecil received a similar letter certified mail from Business Agent Powell apprising him that he now owed \$48 for February, March, and April dues (G.C. Exh. 10).

Cecil next testified that he has received no further notification from or had any conversation with either the Employer or the Union regarding the union-security clause or checkoff provision. Cecil noted that neither the Employer nor the Union have ever attempted to explain to him or afford him his "Beck rights" or explain that he has "the right to pay less than the full amount of Union dues." Cecil added that he has never "gone to the Employer or to the Union and informed them that [he is] asserting what are known as Beck rights" "because it is [his] understanding that it is . . . the Union's responsibility to tell [him] of [his] Beck rights" and make such "disclosure."

On cross-examination, Cecil acknowledged that his references to his "rights" during his March 10 conversation with Union Business Agent Powell were to "[his] rights to associate with whoever [he] wants to associate with"—he had "nothing" else "particular in mind." He acknowledged that the subsequent letters from the Union concerning his arrearages do "not tell [him] that [he has] to be a member of the Union." Further, he acknowledged that, in none of his discussions with Union Business Agent Powell or Steward Ireland or Company Human Resources Manager Williamson, "did [he] suggest to any of these people that [he was] only willing to pay a part of [his] dues" or that he "only wanted to be a financial core member or any words of that nature" or that he "wanted to exercise [his] Beck rights using those words." Cecil admittedly "never communicated what type of objection [he] had to [the] payment of dues to anyone . . . connected with Teamsters Local 614."

Cecil also acknowledged on cross-examination that Powell "never" told him that he "had to sign a check-off card" or "become a member" and, as noted, he did not ask Powell about his "Beck rights" or "how the Union expends the money for dues" or "whether there were some exemptions or exceptions for employees who wish to avoid paying dues." Cecil was "at some point in time" apprised of these and related matters by the National Right to Work Legal Defense Foundation, which represents him in this proceeding.

Donald Culvey, employed by Respondent Employer, testified that he is "covered by the collective bargaining agreement"; that he joined the Union about February 13 because he, in effect, "was told [he] had to"; that he previously had attended in January a Union meeting where "we were to vote . . . to accept the contract" and he "relied on" the pertinent language of the contract presented at that meeting pertaining to "Union Shop And Dues" as quoted above (G.C. Exh. 8, p. 1); that he also "learned that he was "required to join the Union or to become a member in good standing" "from the Company when the dues-checkoff list came in the pay envelope" (G.C. Exh. 2); and that he later decided that "he didn't want to be a part of the Union" after he had "learned" from coworker Cecil that he "did not have to be a member." See the correspondence pertaining to Culvey's attempted "resignation" from the Union and "revocation" of his checkoff authorization (C.P. Exhs. 1, 2, 3(a) and (b)). See also the correspondence pertaining to employee

Michael Martin's attempted "resignation" and "revocation" (G.C. Exhs. 11(a), (b), (c), and (d)).

Kristie Williamson, human resources manager for the Employer, testified that she sent the Employer's notice of February 25 (G.C. Exh. 4), quoted above, to the 23 named unit employees, because

It was my interpretation of the Union's security clause of the contract, which requires that they should become and remain members in good standing.

Previously, she had distributed the Employer's notice of February 5 and union "check-off authorization" forms (G.C. Exh. 2), quoted above, "just for administrative ease so that we could get the dues checked off in time."⁴

Union Business Agent Powell had provided her with the union "checkoff authorization" forms. The Employer continues to deduct dues from the unit employees represented by the Union; however, the Employer has placed fees and dues deducted "in an escrow account" since August, when the consolidated complaint issued in this case.

Cecil Powell, business agent for the Union, testified that he participated in an organizational drive to represent the Employer's employees commencing about April 1991; a representation election was conducted resulting in certification on June 14, 1991; meetings were held before and after certification and "persons like Cecil and Culvey were invited to attend some of these meetings"; contract proposals were discussed at a "proposal meeting" where "persons [were] allowed to ask questions about what should be in the Union security clause [or] check-off clause"; a ratification meeting was held on February 1; and "[t]he contract was read in its entirety and . . . explained to the membership."

Powell assertedly did not refuse to provide anyone with "information about Union membership, payment of dues, check-off or anything of that nature." Prior to ratification, no employees requested such "information" and, later, at the ratification meeting, "persons such as Cecil and Culvey . . . who did not want to be members . . . were . . . given an opportunity to attend" and "ask what questions they wished." There were no questions about "Beck rights" or the general "subject." There was no talk about "full membership" or any "limited obligation"—"that was never asked and [the Union] never volunteered" the "information." Powell, however, was apparently aware of the Beck decision at the time, but, as Powell asserted, "Beck was not a decision that had been clarified by the Board."

Powell next claimed that he had "accepted [Culvey's] resignation of membership," although he had never informed Culvey that he had "accepted [Culvey's] resignation." Powell insisted that Culvey never complained to him "about his dues being checked off, even after he had resigned." Powell further testified:

⁴Elsewhere, Williamson explained:

For the sake of administrative convenience, we sent the dues check-off cards to all the employees in the bargaining unit, in order to speed up the process of dues deduction.

Williamson also acknowledged that the union steward had later requested "an update of the current status of new hires . . . since the contract was ratified," and "dues check-off authorization[s] [were] distributed to the individuals on this list [C.P. Exh. 3] by the Employer."

Q. [W]hen did you first hear about that . . . he had tried to revoke . . . and that dues were still being deducted?

A. I received his letter to that effect.

Q. But did you know that the Employer continued to deduct dues?

A. I imagine there was a statement sent . . . with Culvey's name.

Q. But did he ask for any assistance?

A. No.

Powell added that Culvey has "never asked me of any *Beck* rights as such."

Powell next testified that Cecil, "at some point in time" during their confrontation, "mentioned something about a right to work state" "he believed Michigan was an open state"; but "there was no objection" by Cecil "to paying dues"; Cecil's "statement was to the effect that he did not have to do anything in an open state." Powell admittedly had stated to Cecil that "all Unions would be concerned" about that.⁵ Elsewhere, Powell denied, *inter alia*, "threatening" Cecil or other employees or that he had sought their dismissal for nonpayment of dues. Powell admittedly had made no attempt to provide Cecil "with information concerning how his dues would be calculated" other than the form language provided in General Counsel's Exhibits 9 and 10, quoted above. And, the "calculations" contained in General Counsel's Exhibits 9 and 10 are the same for all unit personnel. Powell emphasized that Cecil never asked for "more information" on dues "calculations" or related matters pertaining to "membership obligations" and "check-off." Powell insisted that Cecil was not "required to accept full membership" with its "responsibilities." And, other employees, including Culvey, were never "asked" or "required" to do more than just pay the dues. Again, Powell asserted: "I have never had a person ask me about *Beck* rights."

Powell next addressed the contractual language in issue here. The "Union Shop And Dues" language, quoted above, has been repeatedly used by the Union over the past years and, as Powell testified, the term "membership" does not "require employees . . . to do anything other than pay dues." Elsewhere, Powell acknowledged that he did not apprise the unit employees that "membership really didn't mean membership in the Union." Powell asserted that he did not know that the Employer was sending checkoff cards to employees in February and had not seen General Counsel's Exhibits 2 and 4, the employer notices to employees quoted above. As noted, General Counsel's Exhibit 4 indicates that a copy was sent to the Union. Employees assertedly were not "forced" by the Union to sign such cards and stewards are not authorized to take any action against employees who decline to sign such cards. Powell claimed that the Employer was never asked to solicit signatures to union checkoff cards.⁶

⁵ Cecil, on rebuttal, denied making any claim to Powell that Michigan was a "right to work state."

⁶ The evidence detailed above, insofar as pertinent here, is essentially undisputed. There are, however, some conflicts in testimony. I credit the above recited testimony of Cecil and Culvey. Their testimony is substantiated in part by undisputed documentary evidence and in part by admissions of Respondents' witnesses. And, they im-

Discussion

Section 7 of the National Labor Relations Act provides that employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities." Section 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of" their Section 7 rights. Section 8(a)(2) forbids an employer "to . . . contribute financial or other support to" "any labor organization." And, Section 8(a)(3) forbids an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." However, Section 8(a)(3) provides that

[N]othing in this Act . . . or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) . . . as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, (i) if such labor organization is the representative of the employees as provided in section 9(a) . . . in the appropriate collective bargaining unit covered by such agreement when made.

In addition, Section 8(a)(3) further provides that

[N]o employer shall justify any discrimination against any employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of retaining membership.

Section 8(b)(1)(A) of the Act, in turn, makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . employees in the exercise of" their Section 7 rights, provided, however, that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." And, Section 8(b)(2) forbids a labor organization or its agents

[T]o cause or attempt to cause an employer to discriminate against an employee in violation of" Section

pressed me as credible and trustworthy witnesses. On the other hand, the testimony of Powell and Williamson was at times vague, incomplete, and unclear. Powell and Williamson did not impress me as credible and trustworthy witnesses. Insofar as the testimony of Powell and Williamson conflicts with the testimony of Cecil and Culvey and documentary evidence of record, I credit the latter as representing a more reliable and complete presentation of the pertinent sequence of events.

8(a)(3), or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

In *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), the issue before the United States Supreme Court was "whether an employer commits an unfair labor practice . . . when it refuses to bargain with a certified union over the union's proposal for the adoption of the agency shop" and, thus, "whether the agency shop is an unfair labor practice under Section 8(a)(3) of the Act or is exempted from the prohibitions of that Section by the proviso thereto." The Court, referring to the pertinent statutory language, stated:

These additions were intended to accomplish twin purposes. On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision "many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost." . . . Consequently, under the new law "employers will still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired," but "expulsion from a union cannot be a ground for compulsory discharge if the worker is not delinquent in paying his initiation fees or dues." [373 U.S. at 740-741.]

The Court explained:

Under the second proviso to Section 8(a)(3), the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues. It is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues. Membership as a condition of employment is whittled down to its financial core. [373 U.S. at 742.]

The Court concluded:

We are therefore confident that the proposal made by the union here conditioned employment upon the practical equivalent of union "membership," as Congress used that term in the proviso to § 8(a)(3). The proposal for requiring the payment of dues and fees imposes no burdens not imposed by a permissible union shop contract and compels those duties of membership which are enforceable by discharge under a union shop arrangement.

....

In short, the employer categorically refused to bargain with the union over a proposal for an agreement within the proviso to Section 8(a)(3) and as such lawful for purposes of this case. By the same token, Section 7, and derivatively Section 8(a)(1), cannot be deemed to forbid the employer to enter into such agreements, since

it too is expressly limited by the Section 8(a)(3) proviso. [373 U.S. at 743-745.]

Subsequently, in *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985), the issue before the Court was "whether Section 8(b)(1)(A) reasonably may be construed by the Board as prohibiting a union from fining members who have tendered resignations invalid under the union constitution." The Court, insofar as pertinent here, noted:

Under Section 8(a)(3), the only aspect of union membership that can be required pursuant to a union shop agreement is the payment of dues. See *Radio Officers v. NLRB*, 347 U.S. 17 (1954) (union security agreements cannot be used for "any purpose other than to compel payment of union dues and fees"). "Membership, as a condition of employment, is whittled down to its financial core." *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). See also *Ellis v. Railway Clerks*, 466 U.S. 435 (1984) (under the Railway Labor Act, employees in a "union shop" cannot be compelled to pay dues to support certain union activities). Therefore, an employee required by a union security agreement to assume financial "membership" is not subject to union discipline. Such an employee is a "member" of the union only in the most limited sense. [473 U.S. at 106 fn. 16.]

The Court explained:

Full union membership thus no longer can be a requirement of employment. If a new employee refuses formally to join a union and subject himself to its discipline, he cannot be fired. Moreover, no employee can be discharged if he initially joins a union and subsequently resigns. We think it noteworthy that § 8(a)(3) protects the employment rights of the dissatisfied member, as well as the worker who never assumed full union membership. By allowing employees to resign from a union any time, § 8(a)(3) protects the employee whose views come to diverge from those of his union. [Id.]

The Court concluded:

Therefore, the Board was justified in concluding that by restricting the right of employees to resign, *League Law 13* impairs the policy of voluntary unionism. [Id. at 107.]

Later, in *Communications Workers v. Beck*, 487 U.S. 735 (1988), bargaining unit employees who chose not to become union members brought suit challenging the union's use of their "agency fees" for purposes other than collective-bargaining, contract administration or grievance adjustment. The union had "negotiated a union-security clause in the collective bargaining agreement under which all represented employees, including those who do not wish to become union members, must pay the union agency fees in amounts equal to periodic dues paid by union members." Under the clause, "failure to tender the required fee may be grounds for discharge." It was contended, insofar as pertinent here, that "the exaction of fees beyond those necessary to finance collective bargaining activities violates Section 8(a)(3); such ex-

actions violate the judicially created duty of fair representation; and such exactions violate . . . First Amendment rights."

The Court, noting that "we have never before delineated the precise limits Section 8(a)(3) places on the negotiation and enforcement of union-security agreements," stated:

Taken as a whole, Section 8(a)(3) permits an employer and a union . . . to enter into an agreement requiring all employees to become union members as a condition of continued employment, but the "membership" that may be required has been "whittled down to its financial core." *NLRB v. General Motors Corp.*, [supra]. The statutory question presented in this case, then, is whether this "financial core" includes the obligation to support union activities beyond those germane to collective bargaining, contract administration and grievance adjustment. We think not.

The Court, reviewing the "historical origins" of Section 8(a)(3) and the above and related decisions, explained that in *Machinists v. Street*, 367 U.S. 740 (1961),

[W]e held that Section 2, Eleventh of the RLA does not permit a union, over the objections of nonmembers, to expend compelled agency fees on political causes Our decision in *Street*, however, is far more than merely instructive here; we believe it is controlling, for Section 8(a)(3) and Section 2, Eleventh are in all material respects identical . . . [and] we think it clear that Congress intended the same language to have the same meaning in both statutes.

. . . .

In *Street* we concluded "that Section 2, Eleventh contemplated compulsory unionism to force employees to share the cost of negotiating and administering collective agreements, and the cost of the adjustment and settlement of disputes," but that Congress did not intend "to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose." . . . We have since reaffirmed that "Congress' essential justification for authorizing the union shop" limits the expenditures that may properly be charged to nonmembers under Section 2, Eleventh to those "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Ellis v. Railway Clerks*, [466 U.S. 435 (1984)]. Given the parallel purpose, structure and language of Section 8(a)(3), we must interpret that provision in the same manner.⁷

The Court concluded:

Section 8(a)(3), like its statutory equivalent, Section 2, Eleventh, of the RLA, authorizes the exaction of only those fees necessary to "performing the duties of an

exclusive representative of employees in dealing with the employer on labor-management issues."

Consistent with the above is the often cited and quoted instruction from the United States Court of Appeals for the Third Circuit in *NLRB v. Hotel & Motel Employees Local 568*, 320 F.2d 254, 258 (3d Cir. 1963), that:

The comprehensive authority vested in the union, as the exclusive agent of the employees, leads inevitably to employee dependence on the labor organization. There necessarily arises out of this dependence a fiduciary duty that the union deal fairly with employees. . . . At the minimum, this duty requires that the union inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure.

Equally consistent with the above is the settled principle of labor law that a union's threat of loss of employment or like and related retaliatory consequences because the employee refuses to join the union may tend to impinge upon employee Section 7 rights and thus violate Section 8(b)(1)(A) of the Act. Cf. *Seamprufe, Inc.*, 82 NLRB 892 (1949), *enfd.* 186 F.2d 671 (10th Cir. 1951); and *Steelworkers Local 5163*, 248 NLRB 943 (1980). Likewise, an employer, under settled principles of labor law, may run afoul of Section 8(a)(1) and (2) of the Act "by requiring [an employee] to sign a union dues check-off authorization form . . . and thereafter deducting money . . . pursuant to such authorization," for, as restated in *Mode O'Day*, 280 NLRB 253 (1986), modified 290 NLRB 1234 (1990):

The inclusion of a check-off authorization among the forms furnished employees during the hiring process may justify a finding that the employees were led to believe that the execution of such authorization was a condition of employment.

In the instant case, Respondent Union was certified as the exclusive bargaining agent of an appropriate unit of Respondent Employer's employees on June 14, 1991. Thereafter, on February 1, 1992, the Union and the Employer entered into and have since maintained a collective-bargaining agreement which expressly conditions continued employment upon the unit employees "becom[ing] and remain[ing] members in good standing" in the Union. No attempt was made by the Union or the Employer, orally or in writing, to apprise the unit employees, either before or after the ratification and adoption of the above union-security language, that "members in good standing" was "the practical equivalent of union membership as Congress used that term in the proviso to Section 8(a)(3)"; or that "membership, insofar as it has any significance to employment rights, may . . . be conditioned only upon payment of fees and dues" and is thus "whittled down to its financial core"; or that "full union membership . . . no longer can be a requirement of employment"; or, finally, that "financial core" "membership" does not "include the obligation to support union activities beyond those germane to collective bargaining, contract administration and grievance adjustment." See *General Motors Corp.*, supra; *Pattern Makers League*, supra; and *Beck*, supra.

⁷ The Court noted that "the NLRB, at least for a time, also took the position that the uniform periodic dues and initiation fees required by Section 8(a)(3) were limited by the congressional concern with free riders to those fees necessary to finance collective bargaining activities."

Indeed, the plain meaning of this union-security clause, read to the unit employees by union representatives, is that "full union membership" would be required in order to be a "member in good standing." Thus, this "members in good standing" language could be, and was, reasonably understood to mean that unit employees may not be delinquent to the Union in any respect. The Union's representatives, although obviously aware of the above Supreme Court holdings, avoided providing any clarification or limitation of the plain meaning of this language. As Union Business Agent Powell acknowledged, prior to ratification, no employees had requested such "information" and, later, at the ratification meeting, "persons such as Cecil and Culvey . . . who did not want to be members . . . were . . . given an opportunity to attend" and "ask what questions they wished"; there were no questions about "Beck rights" or the general "subject"; there was no talk about "full membership" or any "limited obligation"; that was never asked and "[the Union] never volunteered the information."

Employee Culvey credibly testified that he is "covered by the collective bargaining agreement"; that he joined the Union about February 13 because he, in effect, "was told [he] had to"; that he previously had attended in January a union meeting where "we were to vote . . . to accept the contract"; and that he had "relied on" the pertinent language of the contract presented at that meeting pertaining to "Union Shop And Dues" as quoted above. And, Culvey was not alone in this understanding that "members in good standing" meant "full membership." The Employer's human resources manager, Williamson, acknowledged:

It was my interpretation of the Union's security clause of the contract, which requires that they should become and remain members in good standing.

Williamson, given a supply of union-checkoff authorization forms by the Union, sent each unit employee such a form, instructing the employee that the "form must be filled out" and "dues payment is required for your continued employment." Williamson later notified those unit employees who had not promptly executed such forms:

Let me remind you that membership in the [Union] (which includes the payment of monthly dues) is a requirement for continued employment at Rochester Manufacturing Company.

Copies of these notices were also sent by Williamson to "payroll" and the "Union."

Employee Cecil credibly testified that he subsequently went to Williamson's office and asked Williamson, "Will the Company fire me" if Cecil did not sign the form. Williamson warned:

The . . . Union would direct the Company to terminate [the employee] . . . within 30 days . . . because [he] was not considered a member in good standing, because [he] had not signed the check-off and paid the dues.

The Employer in fact had deducted Union "dues" from the Cecil's paycheck of February 27 although he had not signed the authorization form.

Employee Cecil credibly recalled how he complained to Union Steward Ireland in the plant foreman's office that he

"was not going to sign the check-off and join the Union . . . [and] would be suing the Union . . . if . . . terminated for not signing and joining the Union." No attempt was made to explain his limited "membership" obligation. Cecil later met with Union Business Agent Powell in the plant superintendent's office. Powell pointedly asked Cecil "why [he] didn't want to join the Union." Cecil made clear his opposition to union membership and again warned that he would sue "if terminated." Again, Powell made no attempt to apprise the employee of his limited "membership" obligation. Instead, Powell berated the employee in front of the plant superintendent and threatened the employee that he "would soon find out that the full force of the Union, the UAW and the other Unions, would join . . . to come down on" him. Later, Powell repeatedly wrote the employee for his "monthly fees" which were "a condition of employment." Again, Powell made no attempt to apprise the employee of his limited "membership" obligation.

The Employer also continued in this "full membership" understanding of the "members in good standing" language. Williamson acknowledged that the union steward had later requested "an update of the current status of new hires . . . since the contract was ratified," and "dues check-off authorization[s] [were] distributed to the individuals on this list [C.P. Exh. 3] by the Employer." Further, the Employer also notified members and nonmembers alike that,

[W]e encourage each and everyone of you to make every effort to attend that [union] meeting as your votes for steward and committee persons have a significant effect upon you as well as Rochester Manufacturing Company.

Remember, a person that doesn't vote should have no complaint later.

And, as employee Culvey credibly testified, he later decided that "he didn't want to be a part of the Union" after he had "learned" from coworker Cecil that he "did not have to be a member." See the correspondence pertaining to Culvey's attempted "resignation" from the Union and "revocation" of his checkoff authorization (C.P. Exhs. 1, 2, 3(a) and (b)). Union Business Agent Powell never apprised Culvey that his "resignation" was "accepted," and the Employer continued to deduct the "dues." See also the correspondence pertaining to employee Michael Martin's attempted "resignation" and "revocation." (G.C. Exhs. 11(a), (b), (c), and (d).)

I find and conclude that Respondent Employer, by thus entering into and maintaining a collective-bargaining agreement requiring its employees to "become and remain members in good standing" in the Union, by advising its unit employees that union-checkoff authorization forms must be filled out and dues payment is required for their continued employment, and by advising its unit employees that membership in the Union is a requirement for continued employment, has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, and has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees thereby encouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act, as alleged. See *General Motors Corp.*, supra; *Pattern Makers League*, supra; and *Beck*, supra. Further, I

find and conclude that Respondent Employer, by thus advising its unit employees that union-checkoff authorization forms must be filled out and dues payment is required for their continued employment, and by advising its unit employees that membership in the Union is a requirement for continued employment, has rendered unlawful assistance and support to the Union, in violation of Section 8(a)(1) and (2) of the Act, as alleged. See *Mode O'Day*, supra. In addition, I find and conclude that Respondent Employer, by thus threatening to terminate employee Cecil because of his failure to be a "member in good standing in the Union," and by deducting union membership dues from his wages notwithstanding the absence of an authorization for the deduction and remittance of such dues, has further interfered with, restrained and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, as alleged. See *Mode O'Day*, supra.

Likewise, I find and conclude that Respondent Union, by thus entering into and maintaining a collective-bargaining agreement requiring the unit employees to "become and remain members in good standing" in the Union, by failing to advise Cecil and other nonmember unit employees concerning their limited membership rights as explained in *Beck*, supra, by threatening Cecil with reprisals because of his failure to join the Union and pay initiation fees and membership dues, and by later attempting to have Cecil pay initiation fees and membership dues without providing him with notice concerning his limited membership rights as explained in *Beck*, supra, has restrained and coerced employees in the exercise of their Section 7 rights, and has attempted to cause an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, in violation of Section 8(b)(1)(A) and (2) of the Act, as alleged. See *General Motors Corp.*, supra; *Pattern Makers League*, supra; *Beck*, supra; *NLRB v. Hotel & Motel Employees Local 568*, supra; *Seamprufe, Inc.*, supra; and *Steelworkers Local 5163*, supra.

Counsel for Respondent Employer and Respondent Union argue that the "members in good standing" language challenged here has been "Board approved" over the years. However, I do not deem the cited cases as controlling because they either precede the Supreme Court's explication of employee nonmember rights in *Beck*, supra, or because they fail to focus sufficiently on the issue specifically raised here.

In addition, counsel for Respondent Union argues that the General Counsel's case is defective because "no evidence was presented" that the Union "expended any part of dues collected for nonrepresentational activity" and that "any nonmember . . . objected in a legally cognizable manner."⁸ Counsel for Respondent Union cites, inter alia, *Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986), and related cases, in support of this argument. In *Hudson*, supra, the Court explained:

The *Ellis* case, [supra], was primarily concerned with the need "to define the line between union expenditures that all employees must help defray and those that are not sufficiently related to collective bargaining to justify their being imposed on dissenters." . . . In con-

trast, this case concerns the constitutionality of the procedure adopted . . . to draw that necessary line and to respond to nonmembers' objections to the manner in which it was drawn.

Although the Court restated that "dissent is not to be presumed—it must be affirmatively made known to the union by the dissenting employees," the Court also explained:

Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect the basic distinction drawn in *Aboud* [431 U.S. 209 (1977)]. [475 U.S. at 306.]

And, as restated in *NLRB v. Hotel & Motel Employees Local 568*, supra:

The comprehensive authority vested in the union, as the exclusive agent of the employees, leads inevitably to employee dependence on the labor organization. There necessarily arises out of this dependence a fiduciary duty that the union deal fairly with employees. . . . At the minimum, this duty requires that the union inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure. [320 F.2d at 258.]

In the instant case, the Union was aware at the outset of potential employee objectors to union membership. Nevertheless, it made no attempt to explain to the employees that "membership in good standing" was a limited membership as defined above. Later, during repeated confrontations with employee Cecil where he made clear that he would not sign a union-checkoff card and join the Union and would sue the Union if terminated "for not signing and joining the Union," no attempt was made to explain to him or other employees that "membership in good standing" was a limited membership as defined above. And, later, when the Union wrote Cecil for his arrearages in "fees," it again made no attempt to explain to him or other employees that "membership in good standing" was a limited membership as defined above.

In order for nonmember employees to articulate sufficiently an objection to a violation of their *Beck* rights, they must, under the circumstances present here, be first advised by the Union, in the performance of its fiduciary duty, of such "obligations in order that the employee may take whatever action is necessary to protect his job tenure." Ibid. The Union made no attempt here to fulfill its fiduciary obligation, and I therefore reject the above and related contentions.

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce as alleged.
2. Respondent Union is a labor organization as alleged.
3. Respondent Employer, by entering into and maintaining a collective-bargaining agreement requiring its employees to be "members in good standing" in the Union, by advising its unit employees that union-checkoff authorization forms must be filled out and dues payment is required for their

⁸The Union, Local No. 614, affiliated with the International Brotherhood of Teamsters of North America, does not argue here that it does not in fact expend exacted funds for noncontractual or nonrepresentational matters.

continued employment, and by advising its unit employees that membership in the Union is a requirement for continued employment, has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, and has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees thereby encouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act, as alleged.

4. Respondent Employer, by advising its unit employees that union-checkoff authorization forms must be filled out and dues payment is required for their continued employment, and by advising its unit employees that membership in the Union is a requirement for continued employment, has rendered unlawful assistance and support to the Union, in violation of Section 8(a)(1) and (2) of the Act, as alleged.

5. Respondent Employer, by threatening to terminate employee Cecil because of his failure to be a "member in good standing in the Union," and by deducting union membership dues from his wages notwithstanding the absence of an authorization for the deduction and remittance of such dues, has further interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, as alleged.

6. Respondent Union, by entering into and maintaining a collective-bargaining agreement requiring the unit employees to be "members in good standing" in the Union, by failing to advise Cecil and other nonmember unit employees concerning their limited membership rights as explained in *Beck*, supra, by threatening Cecil with reprisals because of his failure to join the Union and pay initiation fees and membership dues, and by later attempting to have Cecil pay initiation fees and dues without providing him with notice concerning his limited membership rights as explained in *Beck*, supra, has

restrained and coerced employees in the exercise of their Section 7 rights, and has attempted to cause an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, in violation of Section 8(b)(1)(A) and (2) of the Act, as alleged.

7. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Employer and Respondent Union will be directed to cease and desist from engaging in the conduct found unlawful and like or related conduct, and to post the separate attached notices. Affirmatively, the Employer and the Union will be directed to rescind and cease and desist from maintaining and enforcing the union-security clause language in the collective-bargaining agreement found unlawful. Further, because the pertinent contractual language is facially invalid and, in addition, the coercive impact of attempts to enforce this language was unitwide, full restoration of the status quo ante is necessary to effectuate the purposes and policies of the Act. Therefore, the Employer and the Union will be directed jointly and severally to reimburse all unit employees for all dues and fees paid as a consequence of this unlawful clause and conduct, together with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, the Union will be directed in its posted notice to apprise employee nonmembers of their rights as explicated in *Beck*, supra. The Union will also be directed to make additional copies of its notices available for the Employer to post with its own notices to ensure that nonmember employees are sufficiently apprised of their rights.

[Recommended Order omitted from publication.]